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## New Report Shows Poor, Mentally Ill Face Disadvantage in Harris County Courts

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[\*Victor/Flickr\*](#)

After embarking on a year-long review of Harris County's pretrial system for poor people, the Texas Indigent Defense Commission released its findings and recommendations Tuesday — and it appears judges have their work cut out when it comes to reform.

According to the commission's analysis, judges appear to be rather arbitrarily deciding whether someone is indigent based solely on whether they paid bail or not, a practice prohibited under the

Fair Defense Act. Bail for defendants appears to be set based solely on what the convenient bail schedule mandates, with deviations from the schedule being rare — a practice for which Harris County has been sued. And court-appointed attorneys appear to be taking on two to four times as many cases than the maximum caseload recommended by the commission, potentially affecting the quality of representation for hundreds of poor clients.

In recent months and years, various other studies have found that Harris County's criminal justice system has a disparate impact on poor people, since those who can afford to pay bail before trial aren't [languishing in custody for months and potentially losing their jobs](#), cars and homes. As University of Pennsylvania researchers told us earlier this year, given people who can't afford to get out may feel an immense amount of pressure to plead guilty even if they are innocent, the fate of a person's case can often be seriously affected by a defendant's ability to pay bail. It's why a group of lawyers from the national group Civil Rights Corps have sued the county, alleging magistrates and judges rarely, if ever, consider a defendant's financial ability to pay as the Constitution requires (the lawyers were formerly with Equal Justice Under Law).

And it appears the Texas Indigent Defense Commission's findings support that assertion, at least in part. In a review of 406 misdemeanor cases, the commission found magistrates only lowered bail below the bail schedule's minimum amount in one case. Meanwhile, magistrates set bail for class A misdemeanors, on average, five times higher than what the bail schedule's minimum amount called for (\$5,000 median compared to \$1,000 minimum).

Murray Newman, an attorney who takes court appointments on the felony side, said that without reform it doesn't appear it'd be possible to thoroughly look into each defendant's circumstances during the probable cause hearing, where magistrates formally set bail. He described the hearings as a "mass-market nightmare," where defendants are moved in and out too quickly for any real discussions to occur.

"Unless they change things logistically or add more courts, you're not going to get a true fair hearing, at least on the felony side" he said.

If defendants were able to post bail, TIDC Senior Policy Analyst Joel Lieurance said some courts automatically assumed that meant the defendants weren't indigent and could afford the thousands of dollars it may cost to hire an attorney. Sometimes it was unclear whether judges even considered who paid for the bond, be it a distant cousin or friend, Lieurance said. If a defendant was appointed an attorney early on, but then later finally scrounged up the money to

pay bail, sometimes courts revoked the court-appointed attorney and told the defendant they had to hire their own because suddenly they must not be poor. Texas statutes prohibit determining indigence solely based on whether someone can pay bail (unless, for example, that bail is \$100,000 and it's clear the person has financial means).

"We didn't find that there was any uniform process among the courts," Lieurance said. "Once you're appointed [as someone's attorney], you're supposed to continue with the case. That's not supposed to be interrupted."

When it comes to personal bonds — which can also be issued in those hearings — the indigent defense commission found magistrates or judges only trusted about 9 percent of people accused of misdemeanors and 1 percent of those accused of felonies to be released pending trial. The commission also noted that attorneys seemed unaware of a law requiring that mentally ill people be released on a personal bond if they can access mental health treatment in the free world: Only about 30 percent of surveyed court-appointed attorneys who represented a mentally ill person reported they were successful in obtaining a personal bond for him or her. While many simply didn't ask for it, some indicated that courts were "reluctant" to grant them.

As one attorney wrote in the survey: "Judges would rather put defendants in jail than give bonds. It's the habit in Harris County, and the false claims of 'public' or 'personal' safety are always used."

Perhaps no survey questions evoked more intense response than those related to court appointments. Even though the commission's guidelines recommend attorneys take on no more than 128 felony cases or 226 misdemeanor cases per year, half of the county's 325 appointed private attorneys exceeded those guidelines. Seventy-five of them had more than double the recommended amount, while one had nearly six times that and others were disposing of as many as 553 felony cases per year and more than 750 misdemeanor cases.

While some attorneys receiving far fewer appointments accused judges of playing favorites and flouting the attorney-rotation system, others voiced concerns for the quality of representation coming from attorneys zipping through cases faster than Houstonians blowing red lights.

One simply wrote, "Sometimes, innocent people go to prison. Puts a knot in my chest."